MESSAGE FROM THE GOVERNOR.

Mr. J. T. Bowman, private secretary to the Governor, appeared at the bar of the House, and being duly announced, presented a message from the Governor, which was read as follows:

Governor's Office,
Austin, Texas, February 13, 1913.

To the House of Representatives:

House bill No. 29 was received in the Governor's office on the 6th day of February, 1913. The endorsements on this bill do not show the vote by which it passed the House and Senate. It is presumed, therefore, that there was either no opposition to its passage, or else it passed by a viva voce vote without roll call.

This bill is entitled an act to authorize the Missouri, Kansas & Texas Railway Company of Texas to lease for a term of not less than twenty-five years the railroads of companies therein named. One of these railroads, towit, the Texas Central, runs from Waco, McLennan county, westward to Rotan, in Fisher county. Another runs from Egan, in Johnson county, to Cleburne, in the same county; another runs from Denison, in Grayson county, to Bonham, in Fannin county; another runs from Livingston, in Polk county, to Madisonville, in Madison county, and does not connect with the main line of the Missouri, Kansas & Texas Railway Company of Texas. Others run from a connection with the Missouri, Kansas & Texas Railway Company at Henrietta to Wichita Falls, thence north of Wichita Falls to the Red River, and south of Wichita Falls to Newcastle. One includes a short mileage from the Oklahoma and Texas State line to the town of Wellington, in Collingsworth county.

On April 16, 1891, the Governor approved Senate bill No. 295 (see pages 120-124, Special Laws of the Twenty-second Legislature). The act provided for the consolidation of the following lines of railway:

	Miles.
Denison & Pacific Railway, Denison to Whitesboro	25
Gainesville, Henrietta & Western Railway, Whitesboro to Henrietta	86
Denison & Southeastern Railway, Denison to Mineola	103
Dallas & Greenville Railway, Dallas to Greenville	52
Sherman, Denison & Dallas Railway, Denison to Sherman	11
Dallas & Wichita Railway, Dallas to Denton	39

	Miles.
Dallas & Waco Railway, Dallas to Hillsboro	66
Taylor, Bastrop & Houston Railway, Fort Worth to Boggy Tank.	250
Taylor, Bastrop & Houston Railway, from Lockhart to San Marcos and from Echo to Belton	22
Trinity & Sabine Valley Railway, Trinity to Colmesneil	67
Making a total of	721

consolidated by Senate bill No. 295, as above stated.

This bill also included in said consolidated mileage the leased track of 72 miles of the Texas & Pacific track, which was leased by the Missouri, Kansas & Texas from Whitesboro to Fort Worth, and over which it runs its trains.

The bonds outstanding on these several lines of railway thus merged by Senate bill No. 295, according to my understanding, are still held in the treasury of the Missouri, Kansas & Texas Railway, and are mortgaged to secure bonds belonging to the Missouri, Kansas & Texas Railway system and are separate charges against said properties owned and mortgaged as above stated.

The provisions of said Senate bill No. 295, approved on April 16, 1891, are such as to give to the Missouri, Kansas & Texas Railway Company, a foreign corporation, the ownership or control over the stock issued on the Missouri, Kansas & Texas Railway Company of Texas, subsequently organized in pursuance of said act. This provision, I believe, is in conflict with Section 6, of Article 10, of the Constitution of Texas, which prohibits a foreign corporation to own and control the stock of railroad companies chartered under the laws of the State of Texas.

Senate bill No. 333, passed the Legislature in 1899, and was approved May 17, 1899. It authorized the Missouri, Kansas & Texas Railway Company of Texas to buy or lease the Sherman, Shreveport & Southern Railway, running from McKinney, in Collin county, to Jefferson, in Marion county, comprising 153 miles. (See pages 206-210, General Laws of the Twenty-sixth Legislature.)

In 1903 the Legislature passed two other consolidation acts for the benefit of the Missouri, Kansas & Texas Railway Company of Texas. They were Senate bills Nos. 85 and 87, and were approved February 21 and 26, 1903, respectively. Senate bill No. 85 authorized the purchase of the Denison & Wichita Valley Railway running from the Red River to Denison, a distance of 6.40 miles; Senate bill No. 87 authorized the purchase by the Missouri, Kansas & Texas Railway Company of Texas of the Granger, Georgetown, Austin & San Antonio Railway, a line then under construction from Granger, in Williamson county, to Austin.

The foregoing contains brief statements of the consolidation acts passed by the Texas Legislature for the benefit of the Missouri, Kansas & Texas Railway Company of Texas. The railroad companies now proposed to be merged under the management and control of the Missouri, Kansas & Texas Railway Company of Texas by the sanction of the Legislature, I think, indisputedly belong to and are now controlled by this railway system. Eight years of laborious service on the Railroad Commission of Texas led me to the conclusion that the principal benefit flowing from such consolidations was to the managers and owners of the railway property, barring the instance where the consolidation bill required the construction of new mileage prior to the act taking effect. The principal benefit to the company owning these several pieces of railway property lies mainly in the convenience and economy of bookkeeping, and in some cases, the convenience in operation.

After the foregoing brief statement I am constrained to return House bill No. 29 without approval:

1. Because it is an enlargement of the control of railway corporations in Texas, by the sanction of the Legislature, by the Missouri, Kansas & Texas Railway Company, a foreign corporation, in violation of Section 6, of Article 10, of the Constitution of Texas, which reads as follows:

"No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other State or of the United States."

The stock of the Missouri, Kansas & Texas Railway Company of Texas is owned or controlled by the Missouri, Kansas & Texas Railway Company of Missouri and Kansas, as shown by the act of 1891 above referred to.

The Attorney General believes that the act is in violation of Section 5, of Article 10, of the Constitution, which prohibits the consolidation of parallel and competing lines of railway in this State. With all due deference to our distinguished Attorney General's opinion on this point, I do not believe that the conclusions of the Supreme Court in the

East Line & Red River case apply to the lines of railway involved in House bill No. 29. Since the decision of the Supreme Court in the East Line & Red River case the people have changed the Constitution authorizing the establishing of the Railroad Commission, giving to it control over and authority to establish and maintain freight rates over the several lines of railway in this State.

2. The reports of the Missouri, Kansas & Texas Railway Company of Texas show an accumulated deficit in operation of $11,381,808.65. I believe that this deficit is due to the ownership, domination and control of the Missouri, Kansas & Texas Railway Company of Texas by the Missouri, Kansas & Texas Railway Company, a foreign corporation, and that a proper system of books and division of freight and passenger earnings are not accorded to the Texas company.

3. Outside of the saving in bookkeeping and in operation to the Missouri, Kansas & Texas Railway Company of Texas, or to the parent and owning foreign corporation, the bill does not promise any public benefit, and with all due deference to the opinions of the owners and operators of the properties of this company, I am of the opinion that the prejudice growing out of such legislation outweighs the benefits even to the corporate interests asking for the consolidation.

For the reasons above assigned House bill No. 29 is returned to you. I attach to this message the able and exhaustive opinion of the Attorney General, Hon. B. F. Looney, in which he holds that the act is unconstitutional on four different grounds.

Respectfully submitted,
O. B. COLQUITT,
Governor of Texas.

OPINION OF THE ATTORNEY GENERAL.

February 12, 1913.

Hon. O. B. Colquitt, Governor of Texas, Austin, Texas.

Dear Sir: Under date of February 8, 1913, you submitted to this Department for examination and conclusion as to its constitutionality House bill No. 29, generally known as "The M., K. & T. Ry. Co. of Texas, et als., Consolidation Bill." The great question of public policy and interest involved in the measure, as well as an abiding respect for the Legislature and the purity of its motives, have led us to a painstaking examination of the same as to its constitutionality, and have caused us to set forth the reasons underlying our conclusions at considerable length.

The conclusion reached, together with the grounds therefor, naturally fall into three groups, towit:

1. The rules of construction to be applied to the constitutional provisions applicable;

2. The adequacy of the consideration for the bill; and

3. The parallel or competing qualities of the roads.

1. The Rule of Construction:

The applicable constitutional provisions are mandatory and must be liberally construed in favor of the State, and strictly construed as against the railway companies.

Cooley on Constitutional Limitations, p. 93; Ency. of Law, Vol. 6, p. 621.

The general rule for interpreting the language of the Constitution, as laid down in the Encyclopedia of Law, and well supported by authorities, is:

"It is a cardinal rule in the interpretation of Constitutions that words are presumed to have been employed in their natural and ordinary meaning." (Ency. of Law, Vol. 6, p. 924.)

"So where the words employed, when taken in their ordinary sense and in their grammatical arrangement, embody a definite meaning which involves no conflict with the other parts of the Constitution, the meaning thus apparent on its face must be adopted. For when the language of the Constitution is plain it is not within the province of the court to speculate as to the purpose of its framers." (Ency. of Law, Vol. 6, p. 922.)

"The enlightened patriots who framed our Constitution, and the people who adopted it, must be understood to have employed words in their natural sense and to have intended what they said." (Gibbons vs. Ogden, 9 Wheat (U. S.), 188; Railway Co. vs. Miller, 19 W. Va., 418; Hills vs. Chicago, 60 Ill., 86.)

"A written Constitution, framed by men chosen for the work by reason of their peculiar fitness, and adopted by the people upon mature deliberation, implies a degree of deliberation and a carefulness of expression proportioned to the importance of the transaction, and words are presumed to have been used with the greatest possible discrimination." (People vs. New York Central Ry. Co., 24 N. Y., 487.)

"We are not at liberty to presume that the framers of the Constitution, or the people who adopted it, did not understand the force of language. That which the words declare is the meaning of the

instrument." (People vs. Purdy, 2 Hill (N. Y.), 31.)

"This is true of every instrument; but when we are speaking of the most solemn and deliberate of all human writings, those which ordain the fundamental laws of the State, the rule rises to a very high degree of significance. A Constitution, unlike the acts of the legislature, owes its whole force and authority to its ratification by the people, and they judged of it by the meaning apparent on its face." (Newell vs. People, 7 N. Y., p. 9; Smith vs. Thursby, 28 Md., 269; Manly vs. State, 7 Md., 135.)

"In the construction of constitutional provisions and statutes, the question is not what was the intention of the framers, but what is the meaning of the words they have used. A Constitution does not derive its force from the convention which framed it, but from the people who ratified it, and the intent to be arrived at is that of the people, and this is found only in the words of the text." (Bardstown vs. Virginia, 76 Ill., 34.)

"That which the words declare is the meaning of the instrument, and neither courts nor legislatures have a right to add to or take away from that meaning." (Hills vs. Chicago, 60 Ill., p. 90.)

"What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it."

"The object of construction, as applied to a written Constitution, is to give effect to the intent of the people in adopting it. In the case of all written laws, it is the intent of the lawgiver that is to be enforced. But this intent is to be found in the instrument itself. It is to be presumed that language has been employed with sufficient precision to convey it, and unless examination demonstrates that the presumption does not hold good in the particular case, nothing will remain except to enforce it. Where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction. Possible or even probable meanings, when one is plainly declared in the instrument itself, the courts are not at liberty to search for elsewhere." (Cooley on Constitutional Limitations.)

Mr. Story, in his work on the Constitution, says:

"The first and fundamental rule in the interpretation of all instruments is, to construe them according to the sense of the terms and the intention of the parties. Mr. Justice Blackstone has remarked that the intention of a law is to be gathered from the words, the context, the subject-matter, the effects and consequence of the reason and spirit of the law. He goes on to justify the remark by stating that words are generally to be understood in their usual and most known signification, not so much regarding the propriety of grammar as their general and popular use.

"Where words are plain and clear, and the sense distinct and perfect arising on them, there is generally no necessity to have recourse to other means of interpretation."

Without having intended to amplify the citation of authorities to such an extent as to make this opinion too long, we have quoted a sufficient number to emphasize the fact that a written Constitution must be interpreted by the language used.

The rules of construction are still further narrowed when the question is the construction of grants of special privileges to corporation, the general rule being, that all grants of special privilege are to be strictly construed against the grantee or the corporation and in favor of the public; that where there is reasonable doubt as to the extent of the privileges conferred in a charter of a private corporation or by the law authorizing the grant, such doubt must be resolved against the corporation and in favor of the public; that if the legislative intent is not ascertainable from the language used in the light of the surrounding circumstances, the doubt is to be determined in favor of the public; that where the object is to grant franchises to corporations, the law must be strictly construed against them.

Ency. of Law, Vol 7, p. 708.

East Line Ry. Co. vs. Rushing, 69 Texas, 314.

Morris vs. Smith Co., 88 Texas, 527.

State vs. So. Pac. Ry. Co., 24 Texas, 127.

Wharf Co. vs. G., C. & S. F. Co., 81 Texas, 494.

Victoria Co. vs. Victoria Bridge Co., 68 Texas, 62.

Williams vs. Davidson, 43 Texas, 1.

Empire Mills vs. Alston, 15 S. W., 200.

N. W. Fertilizer Co. vs. Hyde Park, 97 U. S., 659.

Turn Pike Co. vs. Ill., 96 U. S., 68.

Sedgwick on Statutory Construction, p. 291.

Sutherland on Statutory Construction, Secs. 554 and 555.

In the case of the Fertilizer Co. vs. Hyde Park, supra, the Supreme Court of the United States, in passing upon rights of a corporation under its charter, stated:

"The rule of construction in this class of cases is that it shall be most strictly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded, but what is given in unmistakable terms or by an implication equally clear, the affirmative must be shown. Silence is negation, and doubt is fatal to the claim. It is axiomatic in the jurisprudence of this court."

II. Is the Consideration Sufficient?

"All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive, separate public emoluments, or privileges, but in consideration of public services." (Bill of Rights, Sec. 3.)

Bearing in mind the rules of construction set forth above, it is apparent and conclusive that if the right to consolidate the railroads embraced within the bill is an exclusive public privilege, then it must be in consideration of public service. From that conclusion there is no appeal, and it is mandatory alike upon Your Excellency and this Department to so construe it. Nothing is left to our judgment, nor to our discretion, nor to our views as to the merits of the measure. The Constitution itself, and its exact language, must be our guide, and determine the result.

The question then arises: Is the right to consolidate the various railroads defined in the bill a public privilege, for the granting of which the Legislature must on behalf of the State receive some consideration of public service? The word "privilege" has been defined by the Supreme Court of this State, when used with reference to the granting of some right to a corporation, as meaning a right peculiar to the person on whom conferred, not to be exercised by another or others. (Brenham vs. Water Co., 67 Texas, p. 552.)

The following are some of the definitions of the word "privilege," as laid down in Cyc., Vol. 32, p. 388, et seq.:

"It means in connection with the context a particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantage of other citizens; some right or favor granted by law contrary to the general rule. The enjoyment of some desirable right. An exemption from some general burden, obligation or duty. A peculiar exemption, franchise, right, claim, liberty, and immunity; an immunity held beyond the course of the law; a peculiar immunity; legal power, authority, immunity granted by authority. A right, immunity, benefit or advantage enjoyed by a person or body of persons beyond the common advantage of other individuals; a right or immunity by way of exemption from the general law. A law made in favor of an individual. A particular law or a particular disposition of a law which grants certain special prerogatives to some persons contrary to the common right. A power granted to an individual or corporation to do something or enjoy some advantage which is not of common right."

In other words, the particular privilege sought to be given the companies designated by this measure is a peculiar privilege to which they alone are entitled and is in the nature of a franchise or other thing, in the nature of an extension of the privileges of each of them, by which they become authorized under the law to merge all their rights and properties under one of the franchises or charters held by one of them.

"Franchises are special privileges conferred by the government on individuals, which do not belong to the citizens of the country generally at common right." (Bank of Augusta vs. Earl, 13 Pet., 519.)

"In its broad sense, the word 'franchise' is sometimes used to denote all the rights, powers and privileges of a corporation, especially those which are essential to its operations and management, and to make the grant of value." (Joyce on Franchises, Sec. 3.)

Other definitions given or expresssions used by the courts in opinions or decisions may be briefly stated as follows:

"Privileges or a privilege; a right, privilege or power of public concern which should be reserved for public control; certain immunities and privileges in which the public have an interest—a privilege or immunity of a public nature; an exemption from a burden or duty to which others are subject; a constitutional or statutory right or privilege; a right reserved to the people by the Constitution; a right belonging to the government; a grant under authority of government; a grant of sovereign power; a sovereign prerogative emanating from the sovereign authority of the State, either directly or through a delegated body." (Joyce on Franchises, Sec. 3.)

It will appear from these definitions

of privilege and franchise that as applied to the right sought to be given the several railroad corporations described in the bill that the language used in the Constitution, towit: "Public privilege," has reference to just such rights as is sought to be obtained through the instrumentality of this legislative act. The bill purports to give to the several railroads named a right, privilege, authority and franchise not enjoyed by the citizens generally, nor by other corporations engaged in the same line of business. It is a special privilege of special extension of their corporate rights or a special and peculiar enlargement of their franchises.

In the case of Commonwealth vs. Whipps, 80 Ky., p. 270, et seq., the Supreme Court of Kentucky construed this provision in the Constitution of that State, towit:

"That all free men when they form a social compact are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community, but in consideration of public services."

It will be noted that this clause from the Constitution of the State of Kentucky is almost identical the same as that of our own State, which is now under consideration. The court, in passing upon this section, said:

"Without discussing the grammatical construction of the language used in this section, it is plain, we think, that this constitutional inhibition was intended to prevent the exercise of some public function, or an exclusive privilege affecting the interests and rights of the public generally."

In considering the question further, the court said:

"The granting of ferry privileges, the authority to build bridges and to make turnpikes, is the exercise of a governmental function, and usually requires the exercise of the power of eminent domain, and are granted in consideration of certain services to be performed for the benefit of the public. Such means of intercommunication are necessary in order that the citizen may perform his duty to the government, to facilitate commerce and social relations. The existence of this necessity, and the existence of the fact that ordinarily these things cannot be done without the exercise of the right of eminent domain, renders it the duty of the government to make the grant, and in doing so it may attach such conditions to the grant as it may deem proper; but in all such cases there is a public service or duty to be performed by the grantee. He furnishes the facilities for communication which existing necessity made it the duty of the government to do, and is to that extent acting for the government."

It is apparent from a consideration of this authority, as well as from the ordinary interpretation of the language used and the definitions we have heretofore referred to, that the language of the Constitution contemplates just such a grant of authority as is sought to be given in the bill under consideration, and that it was for such character of grant that the Constitution requires that there shall be a consideration of public service.

In the case of Ashley vs. Ryan, 153 U. S., p. 440, et seq., the Supreme Court of the United States had before it for consideration the question as to whether or not the State of Ohio had the right and authority to impose a certain tax on corporations seeking to consolidate. In passing upon the question, the court, among other things, said:

"The purpose of the tender of the articles of consolidation to the Secretary of State was to secure to the consolidated company certain powers, immunities, and privileges which appertain to a corporation under the laws of Ohio. The rights thus sought could only be acquired by the grant of the State of Ohio, and depended for their existence upon the provisions of its laws. Without that State's consent they could not have been procured. Hence, in seeking to file its articles of incorporation, the company was applying for privileges, immunities, and powers which it could by no means possess, save by the grace and favor of the Constitution of the State of Ohio and the statutory provisions passed in accordance therewith. At the time the articles were presented for filing the statute law of the State charged the parties with notice that the benefits which it was sought to procure could not be obtained without payment of the sum which the Secretary of State exacted: As it was within the discretion of the State to withhold or grant the privilege of exercising corporate existence, it was, as a necessary resultant, also within its power to impose whatever conditions it might deem fit as prerequisite to corporate life. * * * Having thus accepted the act of grace of the State and taken the advantages which sprang from it, the company cannot be permitted to hold on to the privilege or right granted, and at the same time repudiate the condition by the per-

formance of which it could alone obtain the privilege which it sought."

Speaking further on the case, the court quoted with approval from the case of California vs. Pacific Railroad Co., 127 U. S., 1, 40, the following:

"A franchise is a right, privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration. * * * Under our system, their existence and disposal are under the control of the legislative department of the government, and they cannot be assumed or exercised without legislative authority. * * * No private person can take another's property, even for public use, without such authority; which is the same as to say, that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No persons can make themselves a body corporate and politic without legislative authority."

The court, in passing further upon the case, said:

"So, the State has an undoubted power to exact a bonus for the grant of a franchise, payable in advance or in futuro; and yet that bonus will necessarily affect the charge upon the public which the donee of the franchise will be obliged to impose. The stipulated payment in this case, indeed, is nothing more or less than a bonus."

This case is authority for the proposition that the constitutional requirement that the Legislature shall require persons or corporations receiving an exclusive public privilege to, in effect, pay for the same in public service, is a constitutional one, and one clearly within the rights of the State.

From the foregoing authorities and a consideration here given, we think the conclusion is inevitable that when the Legislature undertakes to grant the railroads named in the bill under consideration the exclusive public privilege of consolidating and becoming one corporation under one system, that the Legislature must exact of such corporation a consideration of public service, and that any attempt upon the part of the Legislature to permit the consolidation without such additional consideration is in violation of the Bill of Rights of this State and cannot be enforced.

This leads us to a consideration of the measure, which is House bill No. 29, to see whether or not the proposed bill does exact from the railroads a consideration of public service for the special privilege sought by them; that is to say, whether the language of the bill is sufficient to bring it within the constitutional requirement in this regard.

Section 1 of the bill, after authorizing a lease to be made between the Texas Central Railroad Company and the Missouri, Kansas & Texas Railway Company, and defining and naming the extent of the Texas Central Railroad, beginning in line 29, uses the following language:

"With an extension thereof hereafter to be constructed through the counties of Fisher, Scurry, Kent, Garza, Crosby, Lubbock, Hale, Lamb, Bailey and Parmer * * * and a branch to be hereafter extended from Cross Plains, in Callahan county, through Callahan and Taylor counties to a point in Nolan county, and also a branch line to be hereafter constructed from a point in Erath county, through the county of Eastland, to a point in Palo Pinto county, which said extensions are duly authorized by the charter of the Texas Central Railroad Company and the amendments thereto."

Beginning in line 21, page 5, of the bill, similar language is also used with reference to an extension of the Wichita Falls & Southern Railway, the language being:

"With an extension thereof hereafter to be constructed through the county of Stephens to a point in Eastland county, which said extension is duly authorized by the charter of the said The Wichita Falls & Southern Railway Company."

Similar language is also used with reference to the proposed extension of the Denison, Bonham & New Orleans Railroad Company, the language used beginning on line 15, page 6, being:

"With an extension thereof hereafter to be constructed from Bonham, in Fannin county, through the counties of Fannin and Hunt, and to the town of Wolfe City, in said last-named county, and also a branch line to be hereafter constructed from Ravenna, in Fannin county, through the counties of Fannin, Lamar, Red River, Titus, Camp and Upshur, to the town of Gilmer, in said last-named county, which said extensions are duly authorized by the charter of the said The Denison, Bonham & New Orleans Railroad Company."

Similar language is used with reference to the proposed extension of the Dallas, Cleburne & Southwestern Railway Company, as shown in the bill, beginning with line 34, page 6, the language being as follows, towit:

"With an extension thereof hereafter to be constructed through the counties of Johnson, Tarrant and Dallas, to the city of Dallas, in said last-named county, which said extension is duly authorized by the charter of the said The Dallas, Cleburne & Southwestern Railway Company."

Similar language is also used with reference to a proposed extension of the Beaumont & Great Northern Railroad, as shown in the bill beginning with line 8, on page 7, the language used being as follows, towit:

"With an extension thereof hereafter to be constructed through the counties of Houston and Leon, to the town of Jewett, in said last-named county, which said extension is duly authorized by the charter of the Beaumont & Great Northern Railroad and the amendment thereto."

Beginning in line 12 of the bill, is found the following language:

"And each of aforesaid companies is authorized and empowered to lease to the Missouri, Kansas & Texas Railway Company of Texas, and the Missouri, Kansas & Texas Railway Company of Texas is hereby authorized and empowered to lease from aforesaid companies, or any of them, any other extensions or branch lines hereafter constructed by any of said companies under any amendment hereafter made to the charter of any of said companies under the general laws of Texas, and whether constructed prior to the execution of the lease hereby authorized or during the life thereof, together with all the properties, real, personal and mixed, and the rights, franchises, privileges and appurtenances owned and held by the said railroad and railway companies, and each of them, or incident or appertaining to the said railroads now owned or hereafter acquired or constructed by said respective companies, or any of them."

In Section 2 of the bill authority is given to the Missouri, Kansas & Texas Railway Company to purchase the said companies named along the same lines as specified for the leasing of the same. The authority to purchase is not limited to the actual property and construction of the companies, nor to their charter rights and franchises, but authority is given to purchase the respective railroad companies, or such construction as may be provided for in their charters, and then follows the following language: "Or any amendments thereto now or hereafter made or adopted"—such clause having reference to any amendments hereafter to be made to the charters of the selling companies.

Beginning with line 30, on page 8, we find the following language:

"And the said The Missouri, Kansas & Texas Railway Company of Texas shall further have the right and is hereby granted the power after such purchase or purchases to make such other extensions and construct such other branches to the railroads purchased as may be hereafter authorized by amendment of its charter under the general laws of this State."

The first question we will consider is that raised by the language used with reference to the proposed extensions authorized under the charters of the respective companies.

It is the opinion and conclusion of this department that the language used does not create any obligation upon the part of the purchasing company, the Missouri, Kansas & Texas Railway Company, nor upon the part of either of the selling companies, to make the constructions and extensions referred to, and that should the bill become a law, there will rest no legal obligation upon them so to do; and that such language does not state such a consideration of public service as is contemplated by Section 3, Article 1, of the Constitution of this State. In other words, that so far as the language of the bill is concerned with reference to these proposed extensions, that it states no consideration whatever for the proposed consolidation. It will be noted also from the language quoted from page 7 of the act, in effect, that authority to lease and purchase is not confined alone to the present property and charter rights, privileges and franchises of the selling companies as they exist today, but that such authority shall extend to and embrace any privileges or rights which may hereafter be provided by amendment of the charters of the respective selling companies. It is the opinion of this Department that this particular provision of the bill is wholly without constitutional authority; that the right of the Legislature is limited to authorizing a consolidation of the proposed franchises and charters as they are in existence at the time of the passage of the measure, and that the Legislature cannot, under the Constitution and laws of this State, authorize the leasing or assignment of charter privileges and franchises not in being at the time of the passage of the act and which are to be acquired after the passage of such an

act by the selling or purchasing corporation.

Section 5, of Article 10, of the Constitution provides:

"No railroad or other corporation or the lessees, purchasers or managers of any railroad corporation shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line, etc."

It is apparent from a reading of this section of the Constitution that the language used, as heretofore referred to, on page 7, of the bill, is wholly unconstitutional, void and without effect, because the language authorizes not only the consolidation of the physical properties of the railroads named as now upon the ground and of such construction as might be made under the charters of the railroads as they now exist, with the existing amendments thereto, but that it goes further and permits the consolidation of these roads and "any other extensions or branch lines hereafter constructed by any of said companies under any amendment hereafter made to the charter of said companies under the general laws of Texas." How does the Legislature know what amendments to these charters are going to be made and in what direction the constructions are going to be made, and whether or not such constructions when made will make the lines of which they are a branch competing companies with the Missouri, Kansas & Texas Railway Company. Under this broad and liberal language of the bill each of the selling companies named in this bill could file amendments to its charter authorizing constructions of lines which would become absolutely parallel and competing lines with the Missouri, Kansas & Texas Railway Company throughout the length and breadth of its system, and yet, under this bill the Legislature would have authorized their consolidation in the very face of the letter of the Constitution. It is too plain for argument, and too simple for discussion, that this measure of the bill is unconstitutional and void and ought never to become a law of this State. To give a concrete illustration and example, let us suppose that the Denison, Bonham & New Orleans Railroad Company should amend its charter so that it would be authorized to construct a line of road from Bonham to the city of Dallas, through the rich counties of Fannin, Collin and Dallas, making a line almost exactly parallel to the Missouri, Kansas & Texas Railway Company, and each having the same terminal town, towit, Dallas, and by connections, Denison. Under the terms of this bill, after such construction the Missouri, Kansas & Texas Railway Company would have the right, so far as this act of the Legislature could make the right, to consolidate with its active and competing company, take it over—physical properties, franchises and all, absolutely in violation of the Constitution of this State, and this is only one concrete example of the effect of this clause of the bill. It is no answer to the legal effect of the bill to say that it will not be done; that is beside the issue. The question is: What are the rights and privileges attempted to be conferred? What is the measure and extent of the franchises sought to be granted? The answer is, that an unrestrained and unlimited franchise is granted the Missouri, Kansas & Texas Railway Company to purchase the property, franchises and effects of the selling companies, though each of said companies should hereafter amend its charter and construct lines absolutelv parallel and actively competing with the Missouri, Kansas & Texas Railway Company. On page 8 of the bill the same idea and the same privilege is sought by the purchasing company, in which the act undertakes to grant to the Missouri, Kansas & Texas Railway Company not only the right to purchase all the property, franchises and effects of the selling companies as they now exist, or as they may exist after the completion of the lines provided for by their charters and existing amendments, but the bill seeks to confer upon the Missouri, Kansas & Texas Railway Company the right to purchase and consolidate with all extensions which may be authorized or made under amendments which may hereafter be adopted to the charters of the selling companies. From a consideration of the entire bill, as well as these two named pages, it is clear that the purpose of the measure is to authorize the Missouri, Kansas & Texas Railway Company to consolidate not only the property and franchises of the selling companies as they now exist, but to consolidate such property and franchises as may exist under future amendments to the charters of the selling companies, and as shown, such provisions are in direct violation of the Constitution of this State.

One of the clauses of the measure which we have heretofore quoted, but

which we will re-state to call your Excellency's attention, is shown on page 8, beginning with line 30, and is in substance as follows:

"And the said Missouri, Kansas & Texas Railway Company of Texas shall further have the right and is hereby granted the power after such purchase or purchases to make such other extensions and construct such other branches to the railroads purchased as may be hereafter authorized by amendments to its charter under the general laws of this State."

This right sought to be given to the purchasing company is not one necessary to carry out and into effect the contemplated consolidation, but is an attempt to confer upon the Missouri, Kansas & Texas Railway Company certain privileges of a corporation by a special act of the Legislature, and is in direct conflict with Sections 1 and 2, of Article 12, of the Constitution of this State, which provide:

"Section 1. No private corporation shall be created except by general laws."

"Sec. 2. General laws shall be enacted providing for the creation of private corporations and shall therein provide fully for the adequate protection of the public and of the individual stockholders."

Referring again to the original proposition which we started to discuss in this portion of the opinion, that is to say, that unless this bill exacts some consideration of public service from the railroad companies mentioned in the bill for the privilege given, that the bill is wholly unauthorized by the Constitution, we again call attention to the fact that no kind or character of public service is exacted in this bill from the corporations named. There is no consideration whatever for the privilege and franchise granted to these corporations, either expressly stated in the bill or reasonably implied therefrom.

Section 7 of the bill, among other things, provides:

"The fact that important public interests are to be subserved by the passage of this act, providing for the enlargement and improvement of an important railway system of the State and for additional transportation facilities for the citizens thereof, creates an imperative public necessity and emergency," etc.

An analysis of this statement shows that the important public interests to be subserved is merely the enlargement of an important railroad system of the State. Let us analyze the situation. In what manner is an important railroad system enlarged? It is enlarged only by the absorption of other systems and not a single mile or more of railroad track, nor the improvement of a single mile of the present track, nor the improvement of any facilities on any of the lines is either required or provided for in the measure. So far as the service is concerned under the charters of each of the several railroad corporations involved these corporations are strictly bound to the State and its people to observe the requirements of law and furnish the public a service consistent with the purposes of their franchises and charters. When these corporations become merged into the purchasing company, the extent of the territory covered by the purchasing company and the amount of service which it may render remains exactly the same as that covered by the selling companies and the purchasing company as they now exist today, and the charter of the purchasing company and the lease governing it required no greater a degree in the quality of public service or the territory covered than that required of the several companies as they exist today. If under the terms of the proposed consolidation bill some further construction was required of the purchasing company or some extension of the various proposed lines authorized under the enactments to the charter of some of the selling companies was required, then there might be some consideration of public service, as for example, if the Beaumont & Great Northern Railroad, under the terms of the consolidation bill, was required to extend its line to connect with some important railway system or with some railroad center or with some city of the State, then there would be a consideration of public service, or if the Texas Central Railroad was required to be extended from Rotan until intersected with the Santa Fe, whose line runs north from Sweetwater, and to pass beyond so as to compete with that company in that territory, then there would be a consideration of public service, because where said road crossed the Santa Fe it would become a competing point with the two systems for cotton and other shipments to Houston, Galveston and the seaboard, and vice versa for products coming from the seaboard and interior of the State to the plains of Texas, and thus it appears would be a considerable consideration of public service.

Section 3 of the Bill of Rights, heretofore quoted, reads in effect, that no man or set of men, shall be entitled to exclusive separate public privileges, but in consideration of public services, or to restate it, public services shall be the con-

sideration of exclusive, separate, public privileges.

The word "consideration," as used here, is not used to represent or designate some intangible or moral quantity, but has a defined, usual and legal meaning. In this instance the consideration is named to be public service. Under this bill the exclusive separate public privilege conferred upon the companies is the right of consolidation. The Constitution contemplates that the people of the State shall receive something in the way of compensation for this exclusive privilege. The word "consideration" has been variously defined, some of which definitions will be noted as follows:

"A 'consideration' consists of some benefit or advantage accruing to the promisor or some loss or disadvantage incurred by the promisee. A consideration is an essential ingredient to the legal existence of every simple contract."

Eastman vs. Miller, 113 Iowa, 404.

Conover vs. Stillwell, 34 N. J. Law, 54.

"Consideration is something of value in the eye of the law, moving from one person to another. It may be of some benefit to the latter or some detriment to the former."

N. Y. & M. G. Co. vs. Martin, 13 Minn., 417.

Kemp vs. National Bank of the Republic, 109 Fed., 48.

"There must be something given in exchange, something which is mutual, which is the inducement to the contract; and there must be a thing which is lawful and competent in value to sustain the assumption. It was an early principle of the common law that a mere voluntary act of courtesy would not uphold an assumpsit, but a courtesy shown by a previous request would support it."

Kansas Mfg. Co. vs. Gandy, 11 Neb., 448.

"'Consideration' may be described generally as mere matter accepted or agreed on as a return or equivalent for a promise made, showing that the promise is not made gratuitously."

Donahoe vs. Rich, 28 N. E., 1001.

"The term 'consideration,' as used in the law of contracts, means 'some benefit or advantage accruing to the party promising.'"

Forbis vs. Inman, et al., 31 Pac., 204.

"One of the broadest and perhaps best definitions of the 'consideration' for a contract is the reason which moves the contracting party to enter into an agreement. Chitty speaks of the consideration as the 'motive or inducement to make the promise.'"

1 Pars. Cont., 355, says "the consideration is the cause of the contract."

Roberts vs. City of New York, 5, Abb. Prac., 41.

The provision of the Constitution and the definition and meaning of consideration which we here insist upon is one similar to that meaning which has always been given the word "consideration" in relation to contracts and the law generally. For example: "To constitute consideration it is not absolutely necessary that a benefit should accrue to the person making the promise. It is sufficient that something valuable flows from the person to whom it is made and the promise is the inducement to the transaction."

Violett vs. Upton, 9 U. S., 142.

It is apparent that these various definitions of "consideration," which all in effect amount to the same thing, are applicable to the word "consideration," as used in the Constitution and that in the Constitution the particular consideration specified is public service.

It is an elementary principle of law, that where a person promises to do what he is already bound in law to do, is not a good or sufficient consideration.

"A promise to do what a person is bound to do by law is not a good consideration for any undertaking." Eastland vs. Miller, 113 Iowa, 404.

"A promise to do what the promisor is already bound to do cannot be a consideration, for if a person gets nothing in return for his promise but that to which he is already legally entitled, the consideration is unreal. Therefore, as a general rule the performance of, or promise to perform, an existing legal obligation is not a valid consideration. This legal obligation may arise from (1) the law independent of contract or it may arise from (2) a subsisting contract."

Cyc., Vol. 9, p. 347, and many cases cited in note 39.

"Subsisting Obligation in Law."

"Where a party is under a duty created or imposed by law to do what he does or promises to do his act or promise is clearly of no value and is not a sufficient consideration for a promise given in return. Thus since a public officer is at law required to perform his duties for his salary or other stated compensation, a promise to pay him more than this is founded on no consideration, for he is simply promising in return to do or is actually doing what he is bound to do."

Cyc., Vol. 9, pp. 347 and 348, and many authorities cited in notes 40 and 41.

A case illustrative of this rule last laid down and bearing directly on the issue here is that of Kansas City Ry. Co. vs. Morley, p. 304, in which it was held that a contract between a city contractor for the construction of a sewer under a street and a railway company having a right of way over the street, to the effect that the contractor would pay the company for bridging its tracks while he builds the sewer, was without consideration and void, because the railroad company's right of way was subject to the paramount right of the city to build the sewer, and it was incumbent on the company to protect its own track." (45 Mo. App., 304.)

In the case of Wharton vs. The Erie R. R. Co., 65 N. Y. App., the New York Appellate Division, 587, 72 N. Y. Supp., 1018, it was held that where a statute provided that railroad companies, on application, should issue mileage books good for five hundred or one thousand miles, entitling the holder to the same rights and privileges to which the highest class ticket issued by such corporation would entitle him, and a railroad company, on issuing a book to plaintiff required him to sign a contract that it would be accepted for transportation only for journeys wholly within the State, such stipulation was without consideration and void, since it was the duty of the company to issue the book without other conditions than those prescribed by the statute.

"A promise to pay a common carrier greater compensation than it is entitled to charge or to pay it for delivery of goods which it is bound to deliver without such payment, is void because there is no consideration." (Cyc., Vol. 9, p. 349, and cases cited in note 46.)

"Subsisting Contractual Obligation.

"The promise of a person to carry out a subsisting contract with the promisee or the performance of such contractual duty is clearly no consideration, as he is doing no more than he was already obliged to do and hence has sustained no detriment nor has the other party to the contract obtained any benefit. Thus a promise to pay additional compensation for the performance by the promisee of a contract which the promisee is already under obligations to the promisor to perform is without consideration." (Cyc., Vol. 9, p. 349, 350 and cases cited in notes 54 and 55.)

These authorities are sufficient to sustain the proposition that the agreement on the part of the companies named in the bill under consideration, as set out in their respective charters and franchises and obligations, is not a sufficient consideration for public service defined in the Constitution. They were already obligated by law and by the contractual relationship existing between them and the State in their charters to perform to the fullest extent the public service required by their charters and the laws of this State, and there is nothing in this bill which obligates them to perform any other kind or any further public service.

The charters of all corporations are granted in consideration of the public service to be rendered by the corporation, and for this reason the laws of this State have limited the purposes for which corporations may be formed, as will be observed by a consideration of Article 1121 of the Revised Statutes. In other words, the Legislature does not permit the creation of corporations for all lawful purposes, but only for such lawful purposes as it has appeared to the Legislature that it was for the public interest to permit to be created.

With reference to the creation of railroad corporations, the rule here laid down applies with more than the usual force; that is to say, the rule that the charter of a corporation is granted to it in consideration of public service.

Article 6633 of the Revised Statutes provides that if any railroad corporation shall not within two years after its articles of association have been filed and recorded begin the construction of its road and construct, equip and put in running order at least ten miles of its road, or if any such railroad after the first two years shall fail to construct, equip and put in good running order at least twenty additional miles of its road, each and every year succeeding until the completion of its line, such corporation shall in either case forfeit its corporate existence, and its power shall cease.

This statutory provision is merely carrying into effect the constitutional provision heretofore referred to, to the effect that for an exclusive public privilege granted the grantee must render a public service, and that, when the grantee fails so to do, the public privilege or franchise granted him shall be canceled. This is the underlying principle of the entire doctrine of forfeiture of charters for nonuser or misuser. It would be a useless consumption of time for us to submit a large number of authorities on this proposition.

Cook on Corporations, Vol. 2, Section 633.

Thomas vs. Railroad Co., 101 U. S., p. 78, et seq.

In the latter case the Supreme Court of the United States says, in discussing the question as to the legality of a certain contract made by a railroad company, and as stating the contract was unlawful, said:

"That principle is that where a corporation like a railroad company has granted to it by charter a franchise intended in large measure to be exercised for the public good, the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes without the consent of the State to transfer to others the rights and powers conferred by the charter and to relieve the grantees the burden which it imposes is a violation of the contract with the State and is void as against public policy."

It will be noted, upon an examination of this case, that the contract under consideration, and which was held invalid, was a consolidation agreement entered into by the railroad company.

It appears, therefore, from these additional authorities that when a charter or privilege is granted to a corporation it is granted in consideration of public service and that when the grantee is placed in a position where it cannot, or does not, perform a public service, then that the consideration of the grant fails and the State has the right to forfeit the charter or franchise of the corporation. Now, the grant or privilege sought to be conferred by this bill upon the buying and selling companies is one of so much importance and which needs to be safeguarded in each individual instance and case with so much care and caution, that the Legislature of this State has never seen fit to pass a general statute permitting the consolidation of railroads. The reason of it is at once apparent. It is a larger right and one of more importance than the right of ordinary corporate existence, and one which must be determined upon the individual merits of the particular transaction; and the fact that it is a larger franchise and one requiring a greater degree of care, but emphasizes the issue which we have submitted, that the State ought to receive some consideration for the grant; that the consideration of public service ought to be named and specified in the bill and the companies bound and obligated to perform it. Let us suppose an instance. Let us suppose that this bill is permitted to become a law and complaint is finally made that the corporations are not rendering the public service contemplated as the consideration for the bill. How would this Department determine whether they were rendering such service or not? The public service they were to render has not been defined, either expressly or impliedly, in the measure. When a corporation obtains its charter, one of the requirements of Article 1121 is that it must specify its purpose. Manifestly this is required under the law for three reasons. In the first place, in order to determine whether or not its purpose is a legal one and not against public policy; second, so that all who deal with the corporation may know the extent of its power and authority; and, third, so that the Secretary of State and the Attorney General's Department may see whether or not the purpose specified is one permitted under Article 1121, and therefore one for the public service of which the State is willing to grant the special privilege of corporate existence. When an ordinary railroad charter is granted, the incorporators are required to state in their articles of incorporation what they propose to do. They must state the beginning and terminal point of their line, the length of the line, and describe in a general way what public service they expect to perform as a consideration for the special privilege of becoming a corporate body. These provisions with reference to the incorporation of ordinary corporations and of railroad companies are provisions of law enacted to carry out the constitutional purpose of Section 3, Article 1, of the Bill of Rights, which requires that for a special privilege the recipient shall perform public service, and it is the opinion of this Department that any grant of special privilege, such as is contemplated in House bill No. 29, to the Missouri, Kansas & Texas Railway Company and its associates, must also specify the public service which the people of Texas are to receive in consideration of this particular special privilege conferred upon these corporations.

In the full report made to the Legislature by Mr. Williams of McLennan, recommending the passage of this measure, and shown on pages 14 and 15 of the bill, it is stated that the roads named in the bill sought to be consolidated were owned by the Missouri, Kansas & Texas Railway (permit us to

say here that if such is the fact, such ownership is wholly in violation of the laws of this State and of the Constitution), but that because of the fact that the railroads are not consolidated, the Missouri, Kansas & Texas Railway Company are required to have offices, auditors and different sets of books and accounts kept as to the expenses, maintenance and operations of each of said divisions of road, and that incident thereto there was an unnecessary expense of $100,000 a year. The full report also says that it has been made to appear to the committee that if the authority requested by the bill be allowed that it would facilitate and expedite passenger and freight travel, and would enable the Missouri, Kansas & Texas Railway Company to serve the public in a great deal more advantageous manner and would conduce to assist said railroad in further extensions and improvements on its properties.

The full report, in stating the propositions above referred to, is inaccurate as to the contents and purpose of the bill and as to its legal effect.

Section 5 of this bill provides:

"The authority to lease and sell conferred herein shall be construed as several as to each of the companies named, and each one may lease and sell its properties to the Missouri, Kansas & Texas Railway Company of Texas as herein provided, whether any or all of the others do so or not, and the authority to lease and purchase conferred on the Missouri, Kansas & Texas Railway Company of Texas shall likewise be construed as empowering it to lease and purchase any one or all of said railroads, or any number less than all."

It therefore appears from this section that no obligation rests upon the Missouri, Kansas & Texas Railway Company to combine the several railroad companies named into one system and thereby reduce its estimated expense of maintenance of offices of $100,000. The consideration for this measure ought to be, not what may happen, but what must happen. There is no binding obligation of any kind or character on the Missouri, Kansas & Texas Railway Company in this measure, either expressly stated or reasonably implied. The latter statement in the clause referred to in the full report of Mr. Williams, beginning with line 16 and extending to line 22, page 15, of the bill, to the effect that it has been made to appear that the consolidation will facilitate travel, etc., is beside the issue. It must be made to appear that the Missouri, Kansas & Texas Railway Company is, by the terms of the bill, required to expedite passenger and freight travel, or perform some other additional public service to the people of Texas. It is not that it may do so, but that it must do so which makes a consideration in this measure and anything which falls short of this renders the bill void and unconstitutional.

We conclude, therefore, as we have heretofore stated, that there is no consideration of public service which would authorize the Legislature to enact this bill into law and that for said reason, as well as for the various other reasons we have herein stated, the bill is in violation of the Constitution of this State.

3. Are the Roads Parallel or Competing Lines?

Section 5 of Article 10, of the Constitution declares:

"No railroad, or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of, or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a competing or parallel line."

In the search for a conflict between this section of the Constitution and the bill, the rule of interpretation before set forth must be borne constantly in mind. The reason of those rules as applied to the questions here require that the terms "parallel lines" and "competing lines" must be given the largest possible meaning in favor of the State. In other words, any state of facts which reasonably fall within any liberal definition of the terms is sufficient to set in motion the restriction against consolidation.

The determination of the question of the constitutionality of the bill in this particular necessarily involves a distinct consideration of the relations between the Missouri, Kansas & Texas Railway Company of Texas, and each of the companies sought to be absorbed. The statement of the concrete question in each instance under the facts being: "Are the two roads competing or parallel lines?" This question will be applied specifically hereafter, but it is

deemed helpful to a correct understanding of the questions as applied to have before us typical cases of "'parallel or competing lines," as they have arisen elsewhere.

The question as to what roads are within the prohibition must be determined mainly by whether a consolidation would substantially affect competition, and two roads though not generally parallel or connected with the same termini, may be competing lines by reason of their relations with control or management, operation or connections with lines other than their own.

Cyc., Vol. 7, pp. 425, 426, 427.

People vs. Boston Elec. R. Co., 12 Abb. N. Cos. (N. Y.), 230.

See 81 S. W. Rep., 395.

Louisville, etc., R. Co., 161 U. S., 677.

Dody vs. Grengin R. Co., 112 Fed. Rep., 838.

East W. Lowis vs. Jarvis, 92 Fed. Rep., 735.

Kimball vs. Atchison, etc., 46 Fed. Rep., 888.

State vs. Vanderbroil, 37 Ohio St., 590.

State vs. Montana R. Co., 45 L. R. A., 271.

East Line R. vs. State, 75 Texas, 434.

G. C. & S. F. Ry. Co. vs. State, 72 Texas, 410.

Railway Co. vs. Rushing, 69 Texas, 306.

State vs. Ry. Co. (Mont.), 45 L. R. A., 280.

It is not necessary to a violation of the Constitution that competition be directly affected. The right to consolidate at all being a privilege bestowed by sovereignty, and being expressly bestowed upon condition that the lines are not competing, it is enough, under the rules stated, if the effects be even indirect. Nor must the competition affected be a present, active competition; it is sufficient if the competition be potential—the reason being that the State can not be held to have intended to deprive its citizens of the benefits of possible competition. (I. C. C. Report.)

In the case of the East Line, etc., Ry. vs. State, supra, the Supreme Court held that a line from Greenville in Hunt county, to Jefferson, in Marion county, and crossing or intersecting other lines, was a "competing line" with that of the Missouri, Kansas & Texas Railway Company, which ran through Greenville in a general direction substantially at right angles with the line to Jefferson, the Missouri, Kansas & Texas Railway Company at that time having no line to Jefferson.

Subsequent to this decision the Legislature attempted to permit the consolidation of the two lines (the road from Greenville to Jefferson at that time being designated as the Sherman, Shreveport & Southern Railway Company). This bill was vetoed by Governor Sayers on the ground that they were competing lines. (See House Journal, Twenty-sixth Legislature, pages 1023-1026.)

The competitive character of these lines arose from the fact that the Jefferson line, with its connecting carriers, formed one or more routes to St. Louis and other points in the north, and to the port of Galveston, and other points to the south, which would compete for traffic with the lines of the Katy, and its connecting lines, north and south.

The Twenty-sixth Legislature also passed a bill permitting the St. Louis Southwestern Railway Company of Texas, having a line extending from Texarkana to Waco, to consolidate with the Tyler & Southeastern Railway Company, having a line extending southeasterly from Tyler to Lufkin. The line of the first named company intersected the north and south line of the Houston & Texas Central Railway Company at Corsicana, and thus formed one route from Tyler to Houston and southern points. The International & Great Northern Railway Company had lines extending from Tyler to Houston and Galveston, forming another route. The line of the Tyler & Southeastern Railway Company intersected the line of the Houston East & West Texas Railway Company at Lufkin, and these formed a third route to Houston. Governor Sayers held that under these facts the Tyler & Southeastern Railway Company was a competitor with the St. Louis Southwestern Railway Company of Texas, and vetoed the bill. (See House Journal, Twenty-sixth Legislature, pages 1025-1027.)

In the case of Pearsall vs. Great Northern Ry. Co., 161 U. S., 646, the Supreme Court of the United States held that a road extending from St. Paul to Duluth, in the State of Minnesota, and from Superior, in the State of Wisconsin, westerly across the State of Minnesota, North Dakota, Montana and Idaho to the towns of Everett and Seattle in the State of Washington, with its branches and connections, was a competing line with another road extending from Minneapolis, Minn., in a northerly direction to St. Cloud on the Mississippi river.

The Butte, Anaconda & Pacific Railroad starts from Butte and runs to the city of Anaconda. For fourteen miles after leaving Butte its course is south; then it runs northwesterly about twelve

miles to Anaconda. The road of the Montana Union Railroad Company runs from Butte to Garrison, a station on the line of the Northern Pacific; it practically parallels the line described above for a distance of fourteen miles. About three miles north of where the lines of the Montana Union and the other road described diverge is the station of Stuart on the Montana Union line. The line of a third road runs from Stuart to Anaconda in a northwesterly direction. In the case of the State vs. Ry. Co., 45 L. R. A., 271, it is held that the first and last named railroads are "competing lines."

The road of the West Texas & Pacific extends eastward from Beeville to Victoria, and intersects the San Antonio & Aransas Pass at Beeville, and runs in the same general direction of another line of the San Antonio & Aransas Pass extending from Kenedy to Houston. The distance from Kenedy to Beeville is thirty-two miles, and from Victoria, on the West Texas & Pacific, to Cuero, the nearest point on the San Antonio & Aransas Pass line to Houston, is twenty-eight miles. Beeville is the only common point of the two companies.

The road of the New York, Texas & Mexican Railway Company, extends from Rosenberg, in Fort Bend county, to Victoria. It has no point in common with the San Antonio & Aransas Pass, but Victoria, one of its termini, is twenty-eight miles, and Rosenberg, its other terminus, is sixteen miles from the nearest points, respectively, on the lines of the San Antonio & Aransas Pass.

Governor Lanham, in his message vetoing the Southern Pacific consolidation bill in 1903, held both of these roads to be competing lines with the San Antonio & Aransas Pass. (House Journal, Twenty-eighth Legislature, page 1238.)

In the case of Ry Co. vs. Jarvis, 92 Fed. Rep., 742, the court said:

"We also think it clear, upon the evidence and from the character of the companies, that they were, and were designed to be, competing lines of railway. The Venice & Carondelet Railway crossed all the lines of railway which were crossed by the railway of the East St. Louis Connecting Railway Company. The one company connected with the Madison Ferry Transfer on the north, and with the ferry transfer of the Illinois & St. Louis Railroad & Coal Company on the south. The other company connected with the Wiggins Ferry Company, which latter company owned practically all of its stock. Necessarily they would compete with each other with respect to the transfer to the ferry companies or cars coming to East St. Louis over the line of any railway which they both crossed. It is true that, with respect to certain local industries, they were not competing, because both had not access to them; but the principal business designed was the transfer of through traffic to the city of St. Louis, and the one company, in connection with the ferry companies with which it connected, was the competitor of the other. We think this plain upon its face, and that no elaboration could strengthen the statement."

The Supreme Court of Nebraska, in the case of State vs. R. R. Co., 8 Am., 167, held that two roads, hereinafter described, are competing lines:

"That during all of the time aforesaid there was a strong competition between the aforesaid lines, thereby producing a reasonable but low rate of charges for freight and passenger traffic, and the people living within the territory above described received a great advantage by reason of the low and reasonable rates charged for the transportation of freight and passengers on the defendant's railroad, resulting from the competition aforesaid. That by the competition aforesaid the freight belonging to the people using defendant's line of railroad was shipped south to the city of Atchison, in Kansas, and from there connected with other lines of railroad that were competing with the aforesaid Burlington & Missouri River Railroad for Chicago freight, and for other points east."

The Supreme Court of Missouri, in the case of State vs. Terminal Association, 81 S. W. Rep., 403, said:

"When it is considered that these two railroad corporations each owned or controlled a railroad bridge across the Mississippi river connecting the Union Station in St. Louis, in which all the railroads from the west concentrated, and each connecting with the railroads running into East St. Louis from the north, east and south, and that each had its switches and connections with the various manufacturing plants of the city of St. Louis, and bearing in mind always that, under our Missouri statutes, each was compelled, if required, to connect with other railroads, or suffer them to connect with them, and each to carry and accept for shipments all cars in bulk tendered to it for forwarding, it is impossible to reject the conclusion that, in the sense of the Constitution and our statutes, they were competing lines."

In Pennsylvania it has been held that a line of road from one direction connecting with another line under a statute which gave all roads the right to have their cars received and transported by connecting lines was a competitor with the second line for freight destined to a city located some miles beyond the junction, and on the line of the first road. Ry. Co. vs. Cain, 7 Atl., 368. A statute giving similar rights to connecting carriers is in force in Texas.

In the case of T. & P. Ry. Co. vs. S. P. Ry. Co., 17 Am. St. Rep., 445, decided by the Supreme Court of Louisiana, one of the questions involved was whether or not a traffic arrangement between the two systems whereby a uniform rate was sought to be secured between El Paso and Galveston, and the reverse, and between El Paso and New Orleans, and the reverse, was valid. The court said:

"The communication of the Southern Pacific between El Paso and Galveston was by means of the Galveston, Harrisburg & San Antonio Railway Company, and the Galveston, Houston & Henderson Railway Company. From El Paso to Galveston its (Texas & Pacific) means of communication were by its own line to Mineola, and thence by the International & Great Northern Railway Company connecting with the Galveston, Houston & Henderson Railway Company (at Houston).

"Now, as at certain points, both in Texas and Louisiana, it appears that the respective lines of the plaintiff's and of the defendant's system of road are very far apart; there is no pretention that they are parallel roads, but from the record, as shown from the foregoing statement, it appears very clearly that for the traffic between El Paso and New Orleans, and between El Paso and Galveston, they were unquestionably competing lines.

"It cannot be doubted that shippers who desired, without the existence of the agreement contained in Article 6, to consign goods either from El Paso to New Orleans or the reverse, or from Galveston to El Paso or the reverse, had the option to select either of the two lines in accordance with the most favorable terms which he could obtain from either. He would then have the advantage of the natural competition existing between the two rival systems. But under the effect of the arrangement now under discussion the shipper could desire no advantage as a result of his choice between the two, as the terms would be the same with either or both.

"It is therefore too clear for further argument or illustration that the first, the lasting and the inevitable result of the agreement to the public was to stifle competition, and, as competition is the life of trade, the effect of the contract must necessarily and inevitably have been injurious to public interests, and hence it was contrary to public policy."

The Beaumont & Great Northern.

The road of this company extends from Weldon, in Houston county, through Trinity to Livingston, in Polk county, a distance of forty-eight miles. The general course of the road is south, or southeast. At Trinity it intersects the line of the International & Great Northern Railway Company, extending to Mineola, Longview and Fort Worth, to the north and to Houston, Galveston and Columbia, to the south. At Longview the International & Great Northern connects with a great trunk system extending, with its own lines and connections, to and through many States north and east of Texas; at Mineola it again connects with the same system, and in addition connects with the lines of the Missouri, Kansas & Texas Railway Company of Texas, which system extends, with its own lines and connections, to St. Louis and Kansas City, and many other cities in the North; at Fort Worth the International & Great Northern connects with fifteen other lines, the most of which are trunk systems traversing practically every part of Texas and extending into many other States. At Houston the International & Great Northern connects with twelve other systems, traversing many sections of Texas, and especially the Gulf Coast country and Southwest Texas. At Trinity, also, the Beaumont & Great Northern intersects a line of the Missouri, Kansas & Texas Railway Company of Texas, extending thence eastward to Colmesneil, a point on the line of the Texas & New Orleans Railway Company. This line of the Katy also intersects the north and south line of the Houston East & West Texas Railway Company at Corrigan. At Livingston the Beaumont & Great Northern has a direct north and south connection, in the Houston East & West Texas to Houston and the Gulf on the south and with Nacogdoches, Shreveport and other places northeast, and with Dallas and other places in the north through the connecting lines of the Houston East & West Texas and the Texas & New Orleans Railway. By the use of the Katy

line from Trinity and Corrigan to Colmesneil, and thence the line of the Texas & New Orleans, the Beaumont & Great Northern has a fairly direct connection with Port Arthur and Sabine Pass. Taking Onalaska, a point on the line of the Beaumont & Great Northern between Trinity and Livingston as a type, a shipper desiring to send a carload of lumber to Dallas, could send it via the Beaumont & Great Northern to Trinity, thence via the International & Great Northern to Jacksonville, thence via the Texas & New Orleans to Dallas, a total distance of 230 miles; or he could send it via the Beaumont & Great Northern to Livingston, thence via the Houston East & West Texas to Houston, thence via the Katy to Dallas, a total distance of 425 miles; or he could move it via the Beaumont & Great Northern and International & Great Northern to Mineola, thence via the Katy to Dallas, a total distance of 270 miles. Bearing in mind the fact that a railroad has to receive and transport the cars and freight brought to it by its connections, and the further fact that the apportionment of the freight charges is a matter left largely to the private arrangements of the carriers, it is quite clear that the Katy is a competitor with the Beaumont & Great Northern for the handling of freight destined to Dallas and other northern points within the meaning of the authorities cited above. Bearing in mind the fact that it is only twenty-two miles between Corrigan and Livingston, the respective points where the Katy and the Beaumont & Great Northern intersect the Houston East & West Texas, it is too clear for argument that the two lines are competitive roads for the traffic coming off of the Houston East & West Texas destined for points on the International & Great Northern at least for the traffic destined to points in the general territory of Trinity. Likewise they are direct competitors for the traffic originating at Trinity, and at points in the general territory of Trinity on the line of the International & Great Northern and destined to points along the Houston East & West Texas. To be specific: Suppose a man at Trinity or at Riverside, a point on the International & Great Northern, desires to go to Leggett, a point on the Houston East & West Texas and about midway between Livingston and Corrigan; under present conditions he has a choice of two routes, he can go over the Beaumont & Great Northern to Livingston, a distance of forty-eight miles, thence via the Houston East & West Texas to Leggett, a distance of 8 miles, or a total distance of 56 miles; or he can go over the Katy to Corrigan, a distance of 38 miles, thence over the Houston East & West Texas to Leggett, a distance of 14 miles, or a total distance of 52 miles. But if the Katy absorbs the Beaumont & Great Northern he has no choice of routes—he must take the Katy, or else go a circuitous route seventy-five or a hundred miles out of his course.

There is another consideration of economic value to the State that tends to disclose the meaning of the constitutional prohibition to apply to this case. Suppose that a shipper at Onalaska, a station on the Beaumont & Great Northern between Trinity and Livingston, desires to send a car of lumber to Dallas. The shipment could move over several different routes. For instance, it could move to Trinity over the Beaumont & Great Northern, thence to Jacksonville via the International & Great Northern, thence to Dallas via the Texas & New Orleans, a total distance of 230 miles, which would be the shortest route. Or it could move over the Beaumont & Great Northern to Livingston, thence via the Houston East & West Texas to Houston, thence via the Katy to Dallas, a distance of 425 miles, or a longer route by 195 miles. Under the tariffs of the Railroad Commission, the shipment would take the same rate regardless of its route, which would be the short line route rate. Suppose, offhand, this were $100. The result to the shipper, as a shipper, would be the same, regardless of the routing, but the result to the companies handling the shipment and to the State would not be the same. The charge, $100, would be divided between the companies according to the ratio existing between the amount of the local rate for the traffic between the points where each line received the shipment and where each line delivered the shipment to the total of the local rates of the lines handling the shipment. If the Beaumont & Great Northern is an independent line, therefore, it would be to its interest to send the shipment over the short route, because then it would have a longer proportional haul and a larger proportional local rate, and would receive the maximum return. But suppose this line is owned by the Katy—what would be the result? Clearly it would be materially to the interest of the Katy to have the shipment move via Livingston and Houston, the long route, because then the Katy would haul it the fourteen miles from Onalaska to Livingston and the 339 miles from Houston to Dallas, or a total of 353

miles out of the entire trip of 425 miles. As a matter of course, the local rate from Houston to Dallas over the Katy, on account of the great mileage, would constitute by far the largest local rate in force on any one of the links of the chain of connecting carriers between Onalaska and Dallas, and by reason thereof the Katy would earn and receive the larger portion of the entire rate charges. Under such conditions it is practically certain that the shipment would take the long route. It would in every case where the individual shipper did not demand that it take the short route. This proposition is based upon the universal knowledge of the results of the motive of self-interest. It is supported by the evidence of just such transactions in the past by railroad companies shown in the cases arising therefrom with which the books are crowded. As an example of such case, we cite Thompson vs. M. K. & T. Ry. Co. of Texas, 103 Texas, 372.

Now, it is to the State's interest to have all shipments move over the shortest routes. This is true for two reasons.

One is that the convenience and general welfare of her people demand that each railroad company receive the traffic to which it is entitled under natural and normal conditions, so that the whole transportation system may be symmetrically developed to a healthful and vigorous condition in order that each part may render the maximum of service to the people of the country traversed by it. A symmetrical and vigorous development of the transportation facilities will surely produce a corresponding growth and development of the country and materially add to the patrimony of the State. On the other hand, a particular line of railroad, robbed of its legitimate business and dwarfed by unnatural and unfair conditions, will prevent the full development of the natural resources of its tributary territory and deprive its patrons of its best service and facilities.

In the second place, the actual cost of moving the freight, manifestly, is chargeable to operating expenses. For all practical purposes this cost is based upon the mileage of the trip. It would cost as much to move the shipment over each mile of the long route as it would over each mile of the short trip. Let us assume, for convenience, that the actual cost of moving the shipment is 10 cents per mile; then the cost of the trip over the short route would be $23, as against $42.50 for the long route. Now, the State is entitled to have such freight and passenger rates in force as will only give to the companies a reasonable profit, or interest, on their investment. The company is not entitled to charge higher rates than will do this. Necessarily the actual cost of the movement of each ton of freight must be calculated into the minimum rate which the State can enforce. Every ton of freight, therefore, that is carried a mile beyond the natural and shortest route between the points of consignment and of destination, entails an economic loss to the people and adds the exact amount of the cost of the carriage for the excessive mileage to the sum total which the public must pay for the service of the railroads. To be specific in illustration, in the one case imagined above, the people themselves must pay, gratuitously, the sum of $19.50, being the difference between the cost of the movement of the shipment over the short route and the cost of its movement over the long route, in order to permit the Katy to have an unfair and unnatural advantage over its competitors constituting the short route.

The movement to its destination of every ton of freight by the shortest practicable route is a result that competition is well calculated to procure. The consolidation of these two roads being a convenient method of thwarting the result, it must, perforce be a combination of competing lines.

Under the authorities cited, these two roads are also parallel within the meaning of the constitutional inhibition.

The Denison, Bonham & New Orleans Railroad.

This road extends from Bonham Junction, in Grayson county, in a southeasterly direction to Bonham, in Fannin county, Texas, a distance of 24 miles. Bonham Junction is a point on the main line of the Missouri, Kansas & Texas Railway Company of Texas, and Bonham is a point on the line of the Texas & Pacific Railway Company. This line of the Texas & Pacific Railway Company intersects the aforesaid line of the Missouri, Kansas & Texas Railway Company of Texas at Bells, a point thirteen miles south of Denison, and thirteen miles west of Bonham, making the distance between Bonham Junction and Bonham by way of Bells, twenty-one miles. Manifestly a person at Bonham desiring to go to Bonham Junction, or any other point on the line of the Missouri, Kansas &

Texas has a choice of two routes, and if he desires to go to Bonham Junction, or any point north of that place on the line of the Katy, there will be a difference of only three miles in the route, and this difference will be in favor of the route by way of Bells. Now, the passenger from Bonham Junction to Bonham, if the statutory 3-cent rate is charged over the D. B. & N. O. will have to pay 72 cents for the trip. If he goes to Bonham Junction by way of Bells he will have to pay the Texas & Pacific 39 cents and the Katy 24 cents, or a total of 63 cents for the trip. Under present conditions, therefore, in order to get the traffic between the two points the D. B. & N. O. will have to lower its rates to at least 63 cents, and in this way it becomes an active bidder and competitor for the passengers from Bonham Junction, and from other points on the line of the Katy destined to Bonham. On the other hand, if for any reason, or through any arrangement which the Katy may care to make with the Texas & Pacific with reference to a division of the fares, or the handling of its passengers, the Katy is willing to reduce its rates between Bonham Junction and Bells to less than 24 cents, it will in this way through competition with the D. B. N. & O. force a further reduction in the rate between Bonham Junction and Bonham on the part of the latter road. Under the authorities a road is always a competitor with another road, even though the two may not have more than one common point, if by traffic arrangement, or otherwise, with a connecting carrier two or more common points are reached. On the trial of the case of the State of Texas vs. the Missouri, Kansas & Texas Railway Company of Texas in the district court of Travis county, an agreed statement of facts, signed by counsel, for the Katy of date June 12, 1912, was introduced in evidence. It recites the following:

"Tickets of defendant (Katy) were good for passage on said Texas & Pacific trains (Nos. 31 and 32)."

See statement of facts on file in said cause in the Court of Civil Appeals at Austin, page 28.

Now, according to the monthly Railway Guide, published by the various railroads in Texas, the Texas & Pacific train No. 31 is a westbound passenger train, leaving Texarkana at 7 a. m., reaching Bonham at 12:10 p. m., and Bells at 1 p. m., and No. 32 is an eastbound passenger train passing through Bells at 1 p. m. and Bonham at 1:40 p. m. The Katy operates a train north and south through Bells that make fairly good connections with these Texas & Pacific trains. If the Katy's tickets are good on the Texas & Pacific trains, then manifestly the Katy is a very active competitor with the D. B. & N. O. for the traffic between Bonham and Bonham Junction. To all intents and purposes under the arrangements suggested the Katy has a direct line between the two points, which is a shorter line than that of its competitor. At all events, these two railroads clearly are competitors.

The line of the D. B. & N. O. as constructed runs southeast to Ravenna, a point fifteen miles from Bonham Junction. At Ravenna the course of the road changes so as to become almost mathematically parallel with the line of the Katy from Denison to Greenville, and it keeps this parallel course to the city of Bonham, a distance of nine miles. The charter of this road, as intimated in the bill, calls for the construction of the line from Bonham to Wolfe City, Wolfe City being about sixteen miles south of Bonham, and being ten miles from a point on the line of the Katy. Ravenna, on the D. B. & N. O., is just about ten miles on a direct line from a corresponding point on the Katy, and the course through Ravenna, Bonham and Wolfe City is practically straight. It would be difficult to locate two lines of railroad more nearly parallel than the lines of the Katy and that of the D. B. & N. O. We believe that that portion of the D. B. & N. O. which has already been constructed is a parallel line with that of the Katy within the meaning of the Constitution. Certain it is such when the projected part is considered.

In the case of the Pennsylvania Railroad Company vs. Commonwealth, 7 Atl. Rep., 368; 29 Am. and Eng. Railroad Cases, 145, it was held that the prohibition against acquiring a parallel or competing line includes an unconstructed line.

The court saying:

"Manifestly the term line is used to designate the surveyed route. * * * The purpose undoubtedly was to promote competition in railroad traffic. But if a corporation engaged in constructing a competitive road may be controlled by its rival until the said road is completed, it would be entirely within the power of the rival to determine whether that event should ever happen; as, of course, it never would, when it was the interest of the rival to prevent it, for no company would complete road to hand it over to a competitor.

"Before completion it is 'parallel.' When completed it becomes 'competing.'"

The Texas Central.

The Texas Central extends from Waco northwestward a distance of 267 miles to the town of Rotan. For a distance of about eleven miles out of Waco this line runs within a mile or two of the Katy, and trains on one line are clearly visible from trains on the other for most of this distance. According to the official maps of the Railroad Commission the station of Ross on the line of the Texas Central, 11 miles from Waco, is not more than two miles from Drew, on the line of the Katy; the station of Tokio on the Texas Central, fifteen miles from Waco, is only four and one-half miles from West, a station on the Katy, eighteen miles from Waco; the station of Aquilla on the Texas Central, 22 miles from Waso, is only 6¾ miles from Abbott on the Katy, thirty-four miles from Waco. The country between these roads for this distance is thickly settled, and is a rich agricultural section, not traversed by another road. There is actual and sharp competition between the two lines for the traffic arising therefrom, as, indeed, it is apparent there would be. For this distance, at least, there cannot be the slightest shadow of a doubt that the lines are both parallel and competing. It is true that this is but a fractional part of the mileage of the Texas Central, but the Constitution in declaring that no parallel or competing lines shall be consolidated remained silent as to the distance for which they must be parallel and competing before the prohibition should attach, and we do not feel authorized to amend the Constitution to this extent. The lines being parallel in fact, they are parallel within the meaning of the organic law, and their status cannot be changed either by a legislative finding to the contrary, or through a species of destructive construction by those charged with the administration of the law.

Again: The Texas Central intersects the Santa Fe at Morgan, fifty-three miles from Waco. This line of the Santa Fe is intersected by the Katy at Cleburne. The distance between Morgan and Cleburne over the Santa Fe is thirty miles. The country between these two points is thickly settled, and in order to take care of the traffic the Santa Fe has established numerous stations between the two points. As to all traffic arising along the line of the Santa Fe between these points and destined for Waco, there is, of necessity, sharp competition between the Katy and the Texas Central.

Between Waco and Rotan the Texas Central is connected with three great trunk lines of railroad with direct lines to St. Louis and other cities in the North, and one of which runs directly to the port of Galveston; at Cisco it is crossed by the Texas & Pacific with direct lines to St. Louis and New Orleans and the Eastern States; at Hamlin it intersects the Orient with a line straight into Kansas City; at Waco the Texas Central intersects the Houston & Texas Central, the International & Great Northern and the San Antonio & Aransas Pass, all of which have short routes to Houston and the Gulf, and two of which have such routes shorter than that of the Katy by 55 and 31 miles respectively, or more. The Katy is a very active bidder for all of the traffic in either direction arising on the Texas Central. The Texas Central owes the duty to the State so to route its traffic as to cause each shipment to move over the fewest number of miles to its destination, and to the shipper it owes the duty to deliver the shipment to that connecting line which will handle it with the greatest expedition and care and at the cheapest rate. By reason of its advantageous position as an independent line, it is armed and panoplied with full power to perform these manifold duties and accomplish this happy result. The very active competition between the Katy and these other lines for the Texas Central's traffic furnishes the Texas Central with an easy opportunity to play the one against the other, and in this way give the maximum service to the public. If it be said, or if it be true, that it does not, and will not, do this, this fact simply convicts it of a recreance to its public duty, and in no sense either militates against the existence of the duty or furnishes any good reason why it should be granted further portions of the State's bounty. The change in its relations, as proposed, by giving the Katy the traffic off of this line without having to fight for it upon a competitive basis, will most certainly affect the rates and service to be rendered to the people along the line of the Texas Central, and under every authority, when this is done the lines are "competing lines." In order to have before us a specific violation of this public duty owed by the Texas Central, and a corresponding detriment to the public service, let us suppose a shipper at Rotan has a consignment of perishable stuff for Houston. If the Texas Central is an independent line, in order to make the quickest possible trip, the consignment would naturally move to Morgan over the Texas Central, a dis-

tance of 214 miles, thence via Santa Fe to Houston, a distance of 235 miles, being a total of 449 miles; or it would go to Waco, a distance of 267 miles, thence over the shortest route, which would be the Houston & Texas Central to Houston, a distance of 184 miles, making a total mileage of 451 miles. But if the Texas Central is absorbed by the Katy, naturally the shipment will move from Waco over the Katy to Houston, a distance by that line of 239 miles, making a total mileage of 506 miles. The net result to the shipper is that his perishable produce has been in transit for the extra time necessary to carry it over the fifty-five extra miles, and he has lost a portion of the value thereof. The net result to the State is that it has to contribute, through the avenue of freight rates, a sum exactly equal to the actual cost of carrying the shipment for fifty-five miles.

"Considered with reference to their connections they are competing roads," State vs. East Line, etc., Ry. Co., 75 Texas.

Recapitulation.

It is therefore the opinion of this Department that House bill No. 29, now in the hands of Your Excellency for executive consideration, is in violation of the Constitution of the State of Texas, in the following particulars:

1. It violates Section 5, Article 10, of the Constitution of this State, in that it authorizes the consolidation of parallel and competing lines of railway.

2. It violates Section 5, Article 10, of the Constitution of this State, in that it authorizes the consolidation of the railroads named in the bill, even though they should hereafter amend their charters and construct parallel and competing lines with the Missouri, Kansas & Texas Railroad Company, which is the purchasing company in this instance.

3. It violates Section 3, Article 1, of the Constitution of this State, in that it exacts no consideration of public service from either the selling companies or the purchasing company other than that which said companies are now bound and obligated to render under their respective charters and the laws of the State.

4. It violates Sections 1 and 2 of Article 12 of the Constitution of this State, in that it attempts by a special law to confer certain rights and privileges upon the Missouri, Kansas & Texas Railway Company, which is a corporation, when such rights and privileges, under the sections of the Constitution referred to, can only be conferred by general law.

Respectfully submitted,
LUTHER NICKELS,
Assistant Attorney General.
C. M. CURETON,
First Office Assistant Attorney General.

This opinion has been passed upon, approved by this Department in executive session, and is now ordered recorded.
B. F. LOONEY,
Attorney General.